



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title):

WAC 458-20-136 (Manufacturing, processing for hire, fabricating.)

Date last adopted/issued: **May 17, 2000**

Reviewer: **Mark Mullin**

Date review completed: **December 29, 2003**

Briefly explain the subject matter of the document(s):

WAC 458-20-136 (Rule 136) discusses the tax reporting responsibilities of persons manufacturing products for sale or their own use from materials or ingredients that they own. It also discusses the taxability of persons manufacturing products using materials or ingredients owned by others.

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
X		Have the laws changed so that the document should be revised or repealed?



		(If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
X		Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)

Please explain.

This rule needs to be revised to incorporate recent legislation. RCW 82.04.120 was amended in 2003 to exclude from the definition of "to manufacture" the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

In addition, RCW 82.04.260 was amended to provide a preferential B&O tax rate for persons manufacturing the following products:

- **Dairy products;**
- **Alcohol fuel, biodiesel fuel, biodiesel feedstock, and wood biomass fuel; and**
- **Commercial airplanes, or components of such airplanes.**

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided



		in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

The following documents address issues or provide examples that should be incorporated into Rule 136:

- *Agrilink Foods, Inc. v. Dep't of Revenue*, 2002 WL 32123542 (Wash. Ct. App. Div. 2 July 8, 2002). This case addressed the issue of whether the manufacturing of canned chili products qualifies for the preferential B&O tax rate for manufacturing perishable meat products provided by RCW 82.04.260(4). This unpublished opinion contains information that should either be incorporated into Rule 136 or a new rule dealing with the activities of slaughtering, breaking, and/or processing perishable meat products and/or selling perishable meat products at wholesale.
- Det. No. 99-143, 21 WTD 97 (2002) and Det. No. 99-143R, 21 WTD 106 (2002), address the taxability of processing partially refined soybean and canola oil into “finished” cooking and salad oils.
- Special Notice titled: Tax Changes for Manufacturers of Dairy Products, provides information about the preferential B&O tax rate for qualified manufacturers of dairy products under RCW 82.04.260(1)(d).

The following ETAs were reviewed and are considered to provide information relevant to other rules issued by the Department of Revenue:

- **ETA 404.04.134 -- Off-Site Component Fabrication by Speculative Builders.** This document provides information that should be incorporated into a revision of WAC 458-20-170 (Constructing and repairing of new or existing buildings or other structures upon real property).
- **ETA 154.04.112 -- Measure of Manufacturing Tax on Articles Produced Partly Without and Partly Within The State.** This document provides information that should be incorporated into a revision of WAC 458-20-112 (Value of products).

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?



	X	Do administrative changes within the Department warrant repealing or revising this document?
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Please explain.

Rule 136 is organized and written in a clear and concise manner. While statutory citations are correct, this rule does not reflect several recent changes to RCW 82.04.120 and 82.04.260, as explained above in section 2.

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If “no,” identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

RCW 82.32.300 authorizes and directs the Department of Revenue to make and publish rules necessary to enforce the provisions of chapters 82.02 through 82.23B, 82.27, and 82.32 RCW. RCW 82.01.060 authorizes the director of the Department to adopt such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the Department by the legislature. Rule 136 is consistent with the statutes in existence at the time the rule was last revised, but it needs to be updated to reflect subsequent statutory changes.

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

The Department has the exclusive authority to administer the B&O, retail sales, and use taxes in the area addressed in Rule 136.



7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer "yes" only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

This is an interpretive rule that does not impose any new or additional administrative burdens on taxpayers that are not imposed by law.

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

The information provided in this rule applies equally to all similarly situated taxpayers. However, the rule does not reflect legislation that has taken effect subsequent to the last time the rule was revised. Taxpayers not aware that they need to refer to other documents to determine their tax-reporting responsibilities (e.g., to see if subsequent legislation applies) may, as a result, incorrectly report their tax liability.

9. LISTING OF DOCUMENTS REVIEWED: Use "bullets" with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **To the extent the following apply to persons engaging in manufacturing activities:**

- **RCW 82.04.040 "sale," "casual sale."**
- **RCW 82.04.050 "Sale at retail," "retail sale."**
- **RCW 82.04.060 "Sale at wholesale," "wholesale sale."**
- **RCW 82.04.070 "Gross proceeds of sales."**
- **RCW 82.04.080 "Gross income of the business."**



- RCW 82.04.110 "Manufacturer."
- RCW 82.04.120 "To manufacture."
- RCW 82.04.130 "Commercial or industrial use."
- RCW 82.04.190 "Consumer."
- RCW 82.04.220 Business and occupation tax imposed.
- RCW 82.04.240 Tax on manufacturers.
- RCW 82.04.2403 Manufacturer tax not applicable to cleaning fish.
- RCW 82.04.250 Tax on retailers.
- RCW 82.04.260 Tax on manufacturers and processors of various foods and by-products
- RCW 82.04.270 Tax on wholesalers.
- RCW 82.04.337 Exemptions -- Amounts received by hop growers or dealers for processed hops shipped outside the state.
- RCW 82.04.440 Persons taxable on multiple activities--Credits.
- RCW 82.04.450 Value of products, how determined.
- RCW 82.04.470 Resale certificate -- Burden of proof -- Tax liability -- Rules -- Resale certificate defined.
- RCW 82.08.010 Definitions.
- RCW 82.08.020 Tax imposed -- Retail sales
- RCW 82.08.02565 Exemptions -- Sales of machinery and equipment for manufacturing, research and development, or a testing operation -- Labor and services for installation -- Exemption certificate -- Rules.
- RCW 82.12.010 Definitions.
- RCW 82.12.020 Use tax imposed.
- RCW 82.12.02565 Exemptions -- Machinery and equipment used for manufacturing, research and development, or a testing operation.

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs):

- **ETA 404.04.134 Off-Site Component Fabrication by Speculative Builders**
- **ETA 154.04.112 Measure of Manufacturing Tax on Articles Produced Partly Without and Partly Within The State**

Court Decisions:

- *Agrilink Foods, Inc. v. Dep't of Revenue*, 2002 WL 32123542 (Wash. Ct. App. Div. 2 July 8, 2002). This unpublished opinion addresses the issue of whether the manufacturing of canned chili products qualifies for the preferential B&O tax rate on manufacturing perishable meat products provided by RCW 82.04.260(4).
- *City of Seattle v. Visio Corp.*, 108 Wn. App. 566 (2001). This case addressed the issue of whether the production of prewritten software was a manufacturing activity for purposes of Seattle's B&O tax.
- *Kalama Chemical, Inc. v. State*, 102 Wn. App. 577 (2000). This case addressed the issue of whether the taxpayers were entitled to just compensation for an alleged unconstitutional taking of their property arising out of manufacturing taxes collected by the state from the period 1980 through 1987.



- ***Safeway, Inc. v. Dep't of Revenue*, 96 Wn. App. 156 (1999).** This case addressed the issue of whether the taxpayer was entitled to a multiple activities tax credit against its B&O tax due on its internal distribution activities, for amounts paid in B&O tax on its manufacturing activities.

Board of Tax Appeals Decisions (BTAs):

Appeals Division Decisions (WTDs):

- **Det. No. 01-072, 22 WTD 193 (2003)**, whether taxpayer is liable for manufacturing B&O tax on a ramp it constructed and which became attached to real property.
- **Det. No. 99-198, 19 WTD 463 (2000) and Det. No. 99-198R, 19 WTD 468 (2000)**, addressing the taxability of producing liquid eggs.
- **Det. No. 99-183, 19 WTD 804 (2000)**, appeal of a letter ruling finding that part of the taxpayer's proposed mining and smelting activity does not qualify for either the B&O tax credit for distressed areas allowed under chapter 82.62 RCW or the use tax deferral for manufacturing under chapter 82.60 RCW.
- **Det. No. 99-143, 21 WTD 97 (2002) and Det. No. 99-143R, 21 WTD 106 (2002)**, addressing the taxability of processing partially refined soybean and canola oil into "finished" cooking and salad oils.
- **Det. No. 99-011R, 19 WTD 423 (2000)**, addressing the question of whether the preferential B&O tax rate for slaughtering, breaking, and/or processing perishable meat products and/or selling the same at wholesale applies to the wholesale sale of various perishable deli products that contain meat or poultry products as only one of the ingredients in the items being sold.
- **Det. No. 98-213, 19 WTD 777 (2000)**, addressing the taxability of the licensing of software by a software developer to original equipment manufacturers.
- **Det. No. 98-195, 18 WTD 342 (1999)**, addressing the taxability of the licensing of software by a software developer to original equipment manufacturers.
- **Det. No. 98-190, 18 WTD 402 (1999)**, addressing the taxability of processing of raw chicken and then combining it with other ingredients to make various food items.
- **Det. No. 98-157, WTD 753 (2000)**, aluminum manufacturer protests the assessment of additional manufacturing B&O and use taxes.
- **Det. No. 98-049R, 19 WTD 316 (2000)**, addressing the measure of the manufacturing B&O tax imposed upon the activity of producing software in Washington, which the manufacturer licenses for use outside the state.

Attorney General Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

The following Special Notice was reviewed:

- **Tax Changes for Manufacturers of Dairy Products**



10. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, and court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, and court decisions).

Rule 136 needs to be updated to incorporate legislative changes. This could be done on an expedited basis. Information provided in the documents identified above in section 3 should eventually be incorporated into this rule to reduce the need for taxpayers and Department employees to research multiple documents for information regarding manufacturing tangible personal property.

11. Manager action: Date: 1/14/04

AL Reviewed and accepted recommendation

Amendment priority:

- ☐ 1
☐ 2
☒ 3
☐ 4